IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-5952

IN RE ESTATE OF SHERMAN GORDON,
Deceased,

DETA MONA TRIMBLE, and
JESSIE TRIMBLE,

APPELLANTS,

VS.

JOSEPH ROOSEVELT GORDON,
ETHEL MAE KING,
WILLIAM GORDON,
HELLIE MAE GORDEY,
and MARY LOIS GORDON,

APPELLEES.

ON APPEAL FROM THE
SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

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I N D E X

CITATIONS

CASES:

CONSTITUTIONAL PROVISIONS:

FEDERAL STATUTES:

STATE STATUTES:

MISCELLANEOUS:

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Illinois, entered on September 24, 1975, affirming the judgment of the Circuit Court of Cook County declaring DETA MONA TRIMBLE not the heir at law of her father SHERMAN GORDON,

and thus denying her any part of his estate, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented under the Fourteenth Amendment to the United States Constitution.

OPINION BELOW

The Illinois Supreme Court issued no written opinion in this cause. A copy of its official order is attached hereto as Appendix A. Attached as Appendix B is a certified transcript of the Illinois Supreme Court ruling from the bench, saying its decision here was based upon the case of In re Estate of Louis Karas, 61 Ill. 2d 40 (June 2, 1975). A copy of said decision is attached hereto as Appendix C. A copy of the order of court recalling and staying its mandate to the Circuit Court of Cook County, pending this appeal, is attached hereto as Appendix D.

JURISDICTION

The judgment of the Illinois Supreme Court was entered on September 24, 1975. A rehearing was not sought.

The jurisdiction of the Supreme Court to hear this appeal is conferred by Title 28, United States Code, Section 1257 (2). Levy v. Louisiana, 391 U.S. 68 (1968); Cohen v. California,

403 U.S. 15 (1971); and Winter v. People of State of New York, 333 U.S. 507 (1948).

THE STATUTE INVOLVED

The statute involved in this suit, Illinois Revised Statutes, Ch. 3, Sec. 12, final paragraph (which is the portion of the statute that relates to illegitimate children):

> An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate.

QUESTIONS PRESENTED

1. Does Section 12 of the Illinois Probate Act invidiously discriminate both against and among illegitimate children, thereby denying them equal protection of the laws?

2. Does Section 12 of the Illinois Probate Act invidiously discriminate on the basis of sex, in violation of the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE

This case involves the question of whether the illegitimate child of a man who died intestate is his heir for

inheritance purposes. Sherman Gordon, a 28 year old resident of Chicago, died May 23, 1974, leaving no will. He was the victim of a homicide. His estate consisted of a 1974 Plymouth automobile, having a value of approximately $2,500. He died leaving no spouse, and appellant Deta Mona Trimble, 3 years old at the time of death, as his only descendent.

Appellant Jessie Trimble is a 30 year old woman residing in Chicago. She and Sherman Gordon lived together with their child, Deta Mona Trimble, from 1970 until his death, but they never inter-married. On January 2, 1973, the Circuit Court of Cook County, Illinois, entered an order, in the case of Jessie Trimble v. Sherman Gordon, 72 MC1 - J846169, finding said Sherman Gordon to be the father of Deta Mona Trimble, and ordering him to pay $15 per week for her support. Sherman Gordon in his day-to-day activities publicly acknowledged Deta Mona Trimble as his child, and supported her pursuant to the said paternity order.

On July 25, 1974, Deta Mona Trimble, by her mother and next friend, Jessie Trimble, filed a Petition for Letters of Administration, Determination of Heirship and Declaratory Relief in the Circuit Court of Cook County, Illinois. That court heard arguments as to the unconstitutionality of Illinois Revised Statutes, Ch. 3, Sec. 12, as it applies to illegitimate children, and also heard evidence as

to the heirs of decedent Sherman Gordon.

On September 9, 1974, the court entered the Order Declaring Heirship, which provided that the only heirs of Sherman Gordon are his father, mother, brother, two sisters, and half-brother. In so doing it was held that Deta Mona Trimble was not the heir at law of Sherman Gordon. An appeal was taken from that order. The Illinois Supreme Court entered an order allowing direct appeal, thus bypassing the Illinois Appellate Court. The Illinois Supreme Court also granted leave to appellants to file an Amicus Brief in the case of In Re Estate of Louis Karas, which was then pending before the court. In that case, and its companion case, In re Estate of Robert Woods, illegitimate children whose fathers had died intestate challenged on constitutional grounds the same statute that is challenged herein.

On June 2, 1975, the Illinois Supreme Court issued its opinion in In re Estate of Louis Karas, 61 Ill.2d 40 (1975) upholding the statute and rejecting all arguments of its unconstitutionality, including the arguments made in our Amicus Brief. A copy of said decision is attached hereto as Appendix C. On September 24, 1975, oral argument was held in the instant case before the Illinois Supreme Court, and Chief Justice Underwood orally delivered the

opinion of the court from the bench saying the trial court judgment was affirmed, based upon the Karas holding. A certified transcript of his remarks is attached hereto as Appendix B. On October 15, 1975, the court issued its written order, effective September 24, 1975, affirming the trial court. A copy of that order is attached hereto as Appendix A. It is from the order dated September 24, 1975, issued October 15, 1975, that this appeal is taken. On October 21, 1975, Justice Daniel P. Ward of the Illinois Supreme Court signed an order recalling and staying the mandate issued to the Circuit Court of Cook County on October 15, 1975, pending resolution of this appeal. A copy of that order is attached hereto as Appendix D. Also attached hereto, as Appendix E, is the Notice of Appeal, which was filed on November 17, 1975.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellant Deta Mona Trimble has been denied any right to inherit her father's estate, solely on the basis of her status of birth. Section 12 of the Illinois Probate Act declares that illegitimate children may inherit from and through their mothers, but may not inherit at all from or through their fathers.[1] Instead, her father's collateral

[1] Ill.Rev.Stat., Chapter 3, Sec. 12, as construed by In re Estate of Karas, 61 Ill.2d 40 (1975).

relatives have been declared his sole heirs at law. Had her parents been married at the time of her birth, or had she been subsequently legitimated, appellant Deta Mona Trimble, as decedent's only child, would have inherited his entire estate.[2] The Illinois statute at issue thus discriminates both against and among illegitimate children. It classifies children on the basis of their status at birth, discriminating against those who are illegitimate, and further, by sub-classification among illegitimate children based on the sex of the decedent parent. One sub-class of illegitimate children, those who survive the death of the mother, inherit from the intestate parent, while those surviving the father's death are excluded from any intestate succession. These classifications deny appellant Deta Mona Trimble equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In upholding the constitutionality of Section 12 of the Illinois Probate Act, the Illinois Supreme Court relied exclusively on the decision of this Court in Labine v. Vincent, 401 U.S. 532 (1971). Labine, however, upheld complex provisions of the Louisiana Civil Code defining the rights of legitimate and illegitimate children. These provisions are not only substantially different from those at issue here;

[2] Ill.Rev. Stat., Chapter 3, Sec. 11.

they are, in fact, unique. No jurisdiction other than Louisiana limits the right of an illegitimate child to inherit from this mother, nor does any other jurisdiction require acknowledgment for an illegitimate child to have any right to inherit from his mother.[3] Louisiana is also unique in that it specifically provides for support for all illegitimate children, even those barred from any inheritance rights, and even from the estate of either parent.[4]

The statutes of twenty-one states, in addition to Illinois, explicitly, by implication, or by judicial construction, deny illegitimate children the right to inherit from an intestate father, while providing for inheritance from an intestate mother.[5] The other 28 states, with the exception of Louisiana, provide for inheritance by an illegitimate child from the estate of an intestate father. The law of twenty-one states, then, is identical to that of Illinois.

[3] Louisiana Civil Code, Articles 202, 206, 918-920.

[4] Louisiana Civil Code, Articles 240-242.

[5] Alabama Code, tit.16 §7; Ark.Stats.Ann.§61-103; D.C. Code §19-316; Ga.Code Ann, §113-904; Hawaii Rev.Stat. §§532-7, 577-14; Ky.Rev.Stat. §391.090; Mass. Gen.Laws, Ch.190 §5; Miss.Code, §91-1-15; Missouri (Vernon's) Ann.Stat. §§474.060, 474.070; N.H. Rev.Stat. Ann. §561-4; N.J. Stat. Ann.tit.3A §4-7; Okla.Stat. Ann.tit. 84 §215; Pa.Cons. Stat. tit. 20 §2107; R.I. Gen.Law, §33-1-8; S.C. Code §19-53; Tenn. Code Ann. §§31-107, 31-205; Tex.Stats, Prob. §42; Va. Code §§64.1-5, 64.1-6; W. Va.Code, §§42-1-5, 42-1-6; Wyo.Stats. §2-44. Although Connecticut statutory law is silent on the subject, by judicial construction illegitimate children can inherit through the mother, but not from their fathers. See Dickinson's Appeal, 42 Conn.491(1875); Heath v. White, 5 Conn.228 (1824).

The Illinois Supreme Court, then, has applied the decision of this Court in Labine, a decision based on a statutory scheme which is unique, to a statutory scheme identical to that of twenty-one states. In so doing, however, the court not only ignored major factual distinctions between the Louisiana statutory scheme upheld in Labine and the statute here in question; it also broadened the scope and effect of the Labine decision in the face of clear indications from this Court which limit the impact and meaning of Labine to its particular context.

The reasoning, if not the holding, of Labine has been undermined by several more recent decisions of this Court,[6] and lower courts have had great difficulty in reconciling these decisions.[7] To resolve these conflicts, as well as to decide the constitutionality of a statutory scheme adopted by twenty-one states, this Court should give this appeal plenary consideration.

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[6] E.g., Jimenez v. Weinberger, 417 U.S. 628 (1974); Gomez v. Perez, 409 U.S. 532 (1973) and Weber v. Aetna Casualty Company, 406 U.S. 164 (1972).

[7] See, e.g., Eskra v. Morton, 380 F.Supp. 205 (W.D.Wisc. 1974) reversed ____ F.2d ____, (7th Cir. No. 74-1906, Sept. 29, 1975); Norton v. Weinberger, 364 F.Supp. 117 (D. Md.1973), vac. and remanded, 418 U.S. 902 (1974), (on remand) 390 F.Supp. 1084 (D. Md. 1975), juris.postponed to hearing on merits, ___U.S.___, 95 S. Ct. 2676, 45 L. Ed. 2d 707 (1975); Lucas v. Secretary, Department of Health, Education and Welfare, 390 F.Supp.1310 (D.R.I. 1975) prob. juris. noted, ____U.S.____, 46 L. Ed. 2d 36 (1975); Green v. Woodard, 40 Ohio App.2d 101 (Ohio Ct. of Appeals, Cuyahoga County, 1974).

I. THE ILLINOIS PROBATE ACT DISCRIMINATES BOTH AGAINST AND AMONG ILLEGITIMATE CHILDREN, THEREBY DENYING THEM EQUAL PROTECTION OF THE LAWS.

A. THE LABINE DECISION IS INAPPLICABLE TO STATUTORY CLASSIFICATIONS WHICH DISCRIMINATE BOTH AGAINST AND AMONG ILLEGITIMATE CHILDREN; LABINE IS ALSO INAPPLICABLE TO PROBATE CODES WHICH FAIL TO PROVIDE FOR SUPPORT FOR ILLEGITIMATE CHILDREN.

In recent years this Court has repeatedly invalidated on equal protection grounds discrimination against illegitimate children or sub-groups of illegitimate children. Jimenez v. Weinberger, 417 U.S. 628 (1974); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973); Griffin v. Richardson, 346 F.Supp. 1226 (D. MD. 1972), aff'd 409 U.S. 1069 (1972); Davis v. Richardson, 342 F.Supp. 588 (D. Conn., 1972), aff'd 409 U.S. 1069 (1972); Gomez v. Perez, 409 U.S. 532 (1973); Weber v. Aetna Casualty Company, 406 U.S. 164 (1972); Glona v. American Guarantee and Liability Insurance Company, 391 U.S. 73 (1968); Levy v. Louisiana, 391 U.S. 68 (1968). As concisely stated in Gomez v. Perez, 409 U.S. 532, 538 (1973), "a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally." (Empahsis added). This Court has stated in the strongest possible terms the utter irrationality of archaic discrimination against illegitimate children:

> The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bounds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual --as well as an unjust--way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by those hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to statutus of birth alone--where as in this case--the classification is justified by no legitimate state interest--compelling or otherwise. Weber v. Aetna Casualty Company, 406 U.S. 164, 175-6 (1972).

There is nothing in these opinions which sanctions arbitrary discrimination against illegitimate children, much less the additionally capricious discriminations among illegitimate children created by the statute at issue here.

The Illinois Supreme Court relied solely on Labine v. Vincent, 401 U.S. 532 (1971) in denying appellants' claim. In doing so the Court ignored the substantial differences between the Louisiana statute at issue in Labine and the Illinois scheme at issue here.

In Labine v. Vincent, supra, this Court upheld the constitutionality of certain provisions of the Louisiana Civil Code. In Louisiana, illegitimate children are divided

into two classes, "natural children" who must be acknowledged and whose parents must have been capable of marrying at the time of their conception, and "bastards," who are defined as all unacknowledged illegitimate children and those whose parents were incapable of contracting marriage at the time of their conception.[8] The latter class is barred from inheriting from either parent,[9] while "natural children" are granted limited rights of succession to the estate of either parent.[10] Louisiana also specifically provides for support payments, in the form of "alimony," for all illegitimate minor children, from either parent, and from the estate of either parent,[11] even where the parent dies intestate.

Illinois, in contrast, has no such consistent scheme. This is shown in crucial differences between the Illinois scheme and the Louisiana statute. First, instead of limiting the right of an illegitimate child to inherit from either parent, Illinois not only discriminates against illegitimate children as opposed to legitimate children, but also irrationally discriminates among illegitimate children by creating sub-classes based on the sex of the surviving parent. The Illinois Probate Act mandates that illegitimate children inherit from

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[8] Louisiana Civil Code, Article 202.

[9] Louisiana Civil Code, Article 920

[10] Louisiana Civil Code, Articles 918-919. These sections provide that a "natural child" inherits from his mother if she leaves no others descendants and dies intestate, and inherits from his father if he dies intestate and leaves no other heirs-at-law.

[11] Louisiana Civil Code, Articles 240-42.

their mothers in the same manner as do legitimate children. Illegitimate children who survive the death of their fathers, however, are absolutely barred from intestate succession. This exclusion applies whether or not the father formally acknowledged them, supported them, or had been found, in a paternity action, to be their father.

Second, Illinois has no specific provision allowing illegitimate children support from the estate of a decedent parent. In Louisiana, on the other hand, illegitimate children received some form of protection. "Natural children," as discussed earlier, had limited rights in intestacy. Both "natural children" and the other group of illegitimate children, "bastards," had a right to claim support against the heirs-at-law including legitimate children. La.Civ. Code Ann., Art. 240. Both the plurality opinion (401 U.S. at 533) and Justice Harlan's concurring opinion (401 U.S. at 540) noted this support right. An illegitimate child in Illinois, on the other hand, is left unprotected after the death of his father, even where, as here, the father had acknowledged and was supporting the child pursuant to court order, and had no spouse or legitimate children. Clearly "illegitimate children [are being denied] substantial benefits accorded children generally," Gomez v. Perez, 409 U.S. at 538, in a scheme substantially different from, and more arbitrary and pernicious than the Louisiana

statute which granted some rights to all illegitimate children.[12]

The Illinois exclusion of illegitimate children is not only substantially different from the Louisiana statutory partial inclusion of illegitimate children, but also is more representative of those state statutes which discriminate against illegitimate children. It is therefore appropriate for this Court to grant plenary review of the Illinois discrimination.

B. THE DECISION OF THIS COURT IN JIMENEZ V. WEINBERGER, IS MORE CLOSELY ANALOGOUS THAN THE DECISION IN LABINE.

In Jimenez v. Weinberger, 417 U.S. 628, (1974), this Court struck down a provision of the Social Security Act which prohibited illegitimate children, born after the onset of their father's disability, from receiving Social Security benefits. What is crucial in this context is that the Jimenez children were actually barred from benefits by the operation of Ill.Rev.Stat., Ch. 3, Sec. 12, the statute contested here. As this Court noted:

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[12] In this and other contexts this Court has not favored total exclusions of children from statutory coverage, while taking a more lenient view in cases involving the relative quality and level of inclusions. Compare, e.g., Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Jimenez v. Weinberger, 417 U.S. 620 (1974); N.J.W.R.O. v. Cahill, 411 U.S. 619(1973); Davis v. Richardson, 342 F.Supp. 588 (D. Conn.1972), aff'd 409 U.S. 1069 (1972); and Griffin v. Richardson, 346 F.Supp. 1226 (D. Md. 1972) aff'd 409 U.S. 1069 (1972) with Dandridge v. Williams, 397 U.S. 471 (1971). See also Labine, 401 U.S. at 535-536, distinguishing Levy v. Louisiana, 391 U.S. 68 (1968): "Under those circumstances the Court [in Levy] held that the State could not totally exclude from the class of potential plaintiffs illegitimate children..." (Emphasis added).

> Since the parents never married, appellants are classified as illegitimate children under Illinois law and are unable to inherit from their father because they are non-legitimated illegitimate children. Ill.Ann.Stat., Ch. 4, §12 (sic).
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> The contested Social Security scheme provides, in essence, that legitimate or legitimated children (42 U.S.C. §402 (d)(3)), illegitimate children who can inherit their parent's personal property under the intestacy laws of the State of the insured's domicile (42 U.S.C. §416 (h)(2) (A))... are entitled to receive benefits without any further showing of parental support. However, illegitimate children such as Eugenio and Alicia...who do not fall into one of the foregoing categories, are not entitled to receive any benefits. Jiminez,417 U.S. at 630, 631 n.2 (Emphasis supplied).

In other words, in Jimenez the statutory bar at issue here had been incorporated into federal law and used as a bar to Social Security benefits.

The particular discrimination made in the Illinois Probate Act renders Jimenez, not Labine, analogous here. While Labine dealt with distinctions between legitimate and illegitimate children, Jimenez grappled with the present scheme, creating discrimination not only against illegitimate children, but also among various sub-classes of illegitimates. The Court found the Social Security Act effectively incorporated the statute at issue here in violation of equal protection guarantees. The complete statutory bar imposed on some illegitimates because they could not inherit in intestacy was found to have no rational basis.[13]

[13] See also Eskra v. Morton, ___F.2d___(7th Cir.No.74-1906, September 29, 1975), invalidating a federal statutory denial of inheritance rights to an illegitimate child based on a Wisconsin statute analogous to the statute contested here.

The Illinois statute at issue here not only was the basis of the Social Security Act provision struck down in Jimenez, but is similarly structured to discriminate among illegitimate children as well as against them. Illegitimates are sub-classified based on the sex of the decedent mother. Intestate succession rights equivalent to those of legitimate children are granted illegitimate children of decedent mothers, but denied to children of decedent fathers. This is the type of sub-classification of illegitimate children, mixed with an intent to discriminate against illegitimate children, condemned as irrational in Jimenez.

C. THIS COURT SHOULD RESOLVE THE APPARENT CONFLICT BETWEEN THE REASONING, IF NOT THE HOLDING, OF LABINE AND THE MEANING OF SUBSEQUENT DECISIONS.

Since 1968 this Court has considered the constitutionality of various statutory classifications based on legitimacy of birth no less than nine times;[14] of these decisions, only Labine found the classification capable of withstanding an attack on equal protection grounds. While this result may be explained by reference to the unique Louisiana statutory scheme considered therein, difficulty has arisen since the broader implications of that decision

[14] Jimenez v. Weinberger, 417 U.S. 628 (1974); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973); Griffin v. Richardson, 346 F.Supp.1226 (D.MD. 1972), aff'd 409 U.S. 1069 (1972); Davis v. Richardson, 342 F.Supp. 588 (D.Conn., 1972), aff'd 409 U.S. 1069 (1972); Gomez v. Perez, 409 U.S.532 (1973); Weber v. Aetna Casualty Company, 406 U.S. 164 (1972); Labine v. Vincent 401 U.S. 532 (1971); Glona v. American Guarantee and Liability Insurance Company, 391 U.S. 73 (1968); Levy v. Louisiana, 391 U.S. 68 (1968).

have subsequently been repudiated by this Court. Lower courts, in measuring various schemes which excluded illegitimate children, including exclusions from intestacy statutes, have had great difficulty in grappling with the test applied and the result achieved in Labine, as modified and contradicted by later decisions of this Court:

> Later decisions appear to have eroded the vitality of the majority's opinion in Labine and indicate that the minority view of the four dissenting judges is more in line with the Court's current stance. Norton v. Weinberger, 364 F.Supp. 1117, 1124 (D.Md 1973), vacated and remanded on other gds., 418 U.S. 902 (1974) (on remand) 390 F.Supp. 1084 (D.Md. 1975), jurisdiction postponed to hearing on merits, ___U.S. ____, 95 S.Ct. 2676, 45L.Ed. 2d 707 (1975).

And, as stated in Eskra v. Morton, 380 F.Supp. 205, 214-215 (W.D. Wis. 1974), reversed on other gds. _____F2d_____(7th Cir.No. 74-1906, September 29, 1975):

> I am reluctant to accept a reading of Labine which would leave the state legislatures free to perform this peculiar function [regulating intestate succession] utterly uninhibited in this reluctance by the language of the opinion in Weber...
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> I consider that I may treat as an aberration the process of decision actually engaged in by the Court in Labine, and that Weber, and many other decisions of the Court in non-illegitimacy cases in recent years require [a different judgmental process].

Other Courts have had similar problems in coming to grips

with Labine.[15] This confusion has derived from the inability to reconcile Labine with later decisions in several respects.

First, it must be noted that the Court in Labine suggested an unusual standard of scrutiny. Traditionally, statutory classifications have been subjected to "minimal scrutiny," a test which requires that the classification "bear some rational relationship to legitimate state purposes."[16] Confronted with classifications which either impinge upon "fundamental interests" or which create a "suspect class," however, this Court has applied the "strict scrutiny" test, by which the classification must be justified by a "compelling governmental interest," and must achieve that purpose only by the least drastic means.[17] There may also be an intermediate level of scrutiny, used, for example, in cases involving sex discrimination, by which the classification must bear a "fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."[18]

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[15] See, e.g., Beaty v. Weinberger, 478 F.2d 300 (5th Cir.1973), aff'd 418 U.S. 901 (1974), Watts v. Veneman, 334 F.Supp. 482 (D.D.C. 1971), aff'd in part, rev'd in part on other grounds, 476 F.2d 529 (D.C. Cir. 1973); Severance v. Weinberger, 362 F.Supp. 1348 (D.D.C. 1973) Lucas v. Secretary, Department of Health, Education and Welfare, 390 F.Supp. 1310 (D.R.I.1975) prob. juris.noted ___U.S.____, 46 L.Ed. 2d 36 (1975); Jimenez v. Weinberger 353 F.Supp. 1356 (N.D. Ill.1973), rev'd 417 U.S. 628 (1974); Green v. Woodard 40 Ohio App.2d 101, 318 N.E.2d 397 (Ohio Ct. of Appeals, Cuyahoga County, 1974).

[16] San Antonio School District v. Rodrigue[illegible], 411 U.S.1,40(1973)

[17] Id., at 16-17. See also Police Department of Chicago v. Mosley, 408 U.S. 92 (1972); Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969); Loving v. Virginia, 388 U.S. 1 (1967); In re Griffith, 413 U.S. 717 (1973); and Oyama v. California 332 U.S. 633(1948).

[18] Reed v. Reed, 404 U.S. 71, 75-76. (citation omitted).(1971).

In the Labine decision, however, this Court suggested a standard of review less exacting than any of these formulations: "the power to make rules to establish, protect and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that State."[19] As noted by several lower courts since, as well as by the four dissenters in Labine, this assertion implies that the power of the states to regulate such matters is somehow exempt from even the minimal scrutiny reserved for other legislation. This implication is strengthened by the Court's comment that "even if we were to apply the rational basis test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State." Labine at 536 n.6. If the Court was not applying the "rational basis" test in Labine it is difficult to imagine what level of scrutiny was applied. This Court has never, before or since the decision in Labine, articulated a standard of review less exacting than the "rational basis" test. Any such implication in Labine, moreover, is directly contradicted by the subsequent decisions of this Court in illegitimacy cases. While the Court has, as yet, found it unnecessary to apply the "strict scrutiny" test to classifications based on illegitimacy,[20] it has consistently applied at

[19] Labine v. Vincent, 401 U.S. 532, 538 (1971).

[20] Jimenez v. Weinberger, 417 U.S. 628, 631-32 (1974).

least minimal scrutiny to such classifications.

Any implication from Labine that discrimination against illegitimate children in a statute regulating the disposition of decedents property need not be scrutinized was apparently abandoned shortly afterwards in Reed v. Reed, 404 U.S. 71 (1971) and Weber v. Aetna Casualty Company, 406 U.S. 164 (1972). In Reed this Court examined an Idaho state law established to regulate the disposition of a decedent's property and found sex discrimination in such a law not to bear a "fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." 404 U.S. at 75-76.

Weber v. Aetna Casualty Company, 406 U.S. 164 (1972), as noted in Eskra and Norton, supra, also abandons any suggestion that Labine insulates state intestacy laws discriminating against illegitimate children from equal protection guarantees. Weber offers an explicit enunciation of this Court's deep-rooted concern to protect the rights of illegitimate children. Although the Court found it unnecessary to apply a "strict scrutiny" test, the majority did note the existence of both catalysts, either of which independently triggers strict scrutiny. After noting that the classification affected "fundamental interests,"[21] the Court went on to condemn

[21] "Though the latitude given state economic and social legislation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny." Weber, 406 U.S. 164, 172.

classifications based on legitimacy for many of the same reasons offered by this Court to justify characterizing a class as "suspect:"

> The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bounds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual--as well as an unjust--way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by those hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth alone--where as in this case--the classification is justified by no legitimate state interest--compelling or otherwise.[22]

For both reasons, then, because the classification in Weber approached a "suspect class" and because it approached

[22] Weber, 406 U.S. 164, 175-6. Compare with Frontiero v. Richardson, 411 U.S. 677 (1973), where four justices explained the reason for holding sex to be a "suspect class," citing Weber:
> Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility..." Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175-6 (1972). And what differentiates sex from such non-suspect statutes as intelligence or physical disability, and aligns it with the recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or contribute to society. Id., at 686

"fundamental interests," the Court cited the absence of a "significant" connection between classification and statutory purpose as the basis for its holding the statute unconstitutional. 406 U.S. at 175. This "significant" relationship test is similar to the test used by this Court in Reed v. Reed, supra, and clearly involves heightened concern for illegitimate children.

Indeed, a strong argument can be made that this Court should adopt the "strict Scrutiny" test for all classifications based on illegitimacy. This Court has repeatedly defined "suspect classes" in terms of society's treatment of them:

> The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political processes. Rodriguez, 411 U.S. at 29. See also, Graham v. Richardson, 403 U.S. 365 (1971) and United States v. Carolene Products Co., 304 U.S. 144, 153 n.4 (1938).

That illegitimate children as a class are a discrete and insular minority cannot be seriously contested. Illegitimate children in 1970 comprised only 10.10% of total U.S. births.[23] The class has fared poorly at the hands of the

[23] U.S. Bureau of Census, Statistical Abstract of the United States: 1974 (95th edition), Washington, D.C. p. 56.

majoritarian processes. The effect of society's condemnation of innocent children can only be described as perverse.[24] In fact, one sociologist has concluded that illegitimate children have a lower mean "I.Q." than do legitimate children of the same race and similar economic status. Moreover, the study found that the difference increased as the children grew older, and concluded that the difference was the result of the child's increasing awareness of his socially inferior status.[25] The effect of governmental and societal discrimination against illegitimate children, then, is stigmatizing and invidious; it deprives innocent children of an equal opportunity to develop intellectually and emotionally. In order to insure that illegitimate children receive an equal opportunity to develop their minds, this Court should declare that all classifications based on illegitimacy are "suspect."[26]

Even if this Court rejects the notion that classifications based on illegitimacy are "suspect," however, recent decisions do make it clear that such classifications must be given more

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[24] "To give the illegitimate child an inferior status because, through no fault of his own, his parents were never joined in an easily dissolved union is a hypocrisy which can only frustrate and alienate him from the society which created his inferiority." Marcus "Equal Protection: The Custody of the Illegitimate child," 11 Journal of Family Law 1, 17-18 (1971).

[25] Jenkins, "An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children," 64 American Journal of Sociology 196 (1958).

[26] cf., Brown v. Board of Education, 347 U.S. 483 (1954).

than minimal scrutiny. Nevertheless, until this Court expressly rejects the implication in Labine that such classifications need not be scrutinized carefully, lower courts may continue to misconstrue the test to be applied to classifications based on status of birth. Plenary consideration of this appeal, then, is necessary in order to settle the apparent conflict between the standard of review adopted in Labine and that articulated in Reed, supra, Weber, supra, Gomez, supra, and Jimenez, supra.

Subsequent decisions of this Court have also undermined the other rationales offered by the Labine majority. In Labine itself this Court placed primary emphasis on the state interest in preserving and promoting family life, yet in Weber v. Aetna Casualty Company, supra, only one year later, this Court abandoned the "family life" rationale so strongly relied upon in Labine, rejecting in unmistakably strong language the validity of the rationale when offered to support the discrimination against illegitimate children contained in the Louisiana Workman's Compensation Statute. The language in Labine equating illegitimate children and "concubines" (401 U.S. at 538) has been abandoned as this Court has recognized that stigmatizing and penalizing the child is an ineffective way of deterring the parent and promoting family life. Weber, 406 U.S. at 175-6; Jimenez, 417 U.S. at 632.

This Court has also, since Labine, undermined any explanation of that case based on the state interest in the prompt and definitive determination of the valid ownership of property left by decedents. In Gomez v. Perez, 409 U.S. 532 (1972), the Court struck down a statute which prohibited illegitimate children from obtaining support from their fathers in spite of a recognition of the state's valid interest in preventing spurious claims. Recognizing the difficulty of proof which is inherent in paternity actions, the Court nevertheless held that such difficulties may not"... be made into an impenetrable barrier that works to shield otherwise invidious discrimination." 409 U.S. at 538. The assertion in Labine that allowing illegitimate children to inherit from intestate decedents would prevent prompt and definitive determinations of the ownership of property is attributable to the occasional difficulty of establishing paternity. This concern was decisively rejected in Gomez. See also Weber, 406 U.S. at 174, Jimenez, Griffin, Davis, supra, Stanley v. Illinois, 405 U.S. 645 (1972). They make clear that the Court is not unmindful that illegitimacy presents difficult problems of proof of paternity, and that the Court will respect the state or federal government's method of determining the genuineness of individual claims. But they also unequivocally establish that once paternity is established, the constitution requires

that all children--whether legitimate or illegitimate--be treated equally. Moreover, in all these cases, all proof problems evaporate where, as here, there has been a formal and definitive devolution of property, a state certainly cannot discriminate between legitimate children and illegitimate children who have been acknowledged.

Finally, there is the possible Labine rationale based on the suggestion that the decedent could have legitimated a child or written a will. 401 U.S. at 539. From the point of view of the child discriminated against, it really makes no difference whether such options were non-existent or simply not exercised.[27] This Court made it clear in Weber that an illegitimate child cannot be penalized for the action/inaction of his parent. 406 U.S. at 175-176. As recently stated in Eskra v. Morton, _____F.2d _____(7th Cir.no. 74-1906),(September 29, 1975) (Slip opinion p.7):

> In our judgment, the presumed intent of intestate decedents in an unacceptable justification for a decision by the state which the state would otherwise be unable to justify. It is unacceptable, not because it is irrational to assume that there are a significant number of private citizens who would intentionally punish children for the transgressions of their parents, but rather because such motivation on the part of the state is offensive to our concept of due process. In some communities it would be unrealistic to assume that most decedents would discriminate in favor of, or against, members of a particular religious sect, race, political party, or

[27] Similarly in Reed v. Reed, 404 U.S. 71 (1971), the statutory preference to the male in issuing letters of administration of a person dying intestate could easily have been altered by a writing of a will by a decedent.

> perhaps even sex. But surely the state may not, for that reason alone, make comparable discriminatory choices. Just as private schools or private hospitals may place some arbitrary limits on the classes of people they will serve, so may testators make irrational choices in the distribution of their property. But when the choice is made by the government, the obligation to afford all persons equal protection of the laws arises.

A review of cases from Weber through Jimenez, then, reveals that both the standard of review articulated in Labine and the rationales offered therein to support the classification of children by legitimacy of birth in Louisiana's Probate Code have been repudiated, at least by implication, by this Court. The decision of the Illinois Supreme Court in this case, however, expands Labine by applying it to an entirely different statutory scheme. To correct this error and to resolve the apparent conflicts between Labine and subsequent decisions, conflicts which have caused significant problems in lower courts, this Court should give this appeal plenary consideration.

II. THE ILLINOIS PROBATE ACT INVIDIOUSLY DISCRIMINATES AGAINST APPELLANTS ON THE BASIS OF SEX IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appellants here have also been harmed by the discrimination on the basis of sex embodied in Section 12 of the Illinois Probate Act. Under Illinois law, both the father and mother of a child, including an illegitimate child,

have a duty to support the child, e.g. Ill. Rev.Stat., Ch. 23, Sec. 10-2; Ill.Rev.Stat., Ch. 68, Sec. 24; Ill.Rev. Stat., Ch. 106 3/4, Sec. 52. When one parent dies, the surviving parent obviously retains the duty of support and maintenance of the child as a legal matter, and as a practical matter, the burden of that legal duty becomes greater because it is no longer shared. Yet, despite the clear economic disadvantage of surviving mothers (compared to surviving fathers) as discussed below, existing law gives preference to and assistance in meeting the support obligation to the surviving father. This discrimination on the basis of sex violates the equal protection rights of both the mother and the children, as established by Weinberger v. Weisenfeld, 420 U.S. 636 (1975).

The statute accomplishes this discrimination by providing that when the mother of the illegitimate child dies intestate, the illegitimate child is the "heir of his mother." Ill.Rev.Stat., Ch.3, Sec. 12. The father, as the surviving parent, is, therefore directly assisted in his support obligations by the fact that the child is legally entitled to money from the estate of the intestate mother. When the father of an illegitimate child dies intestate, on the other hand, the child is barred from sharing the estate.

The child's mother, his sole surviving parent, is therefore burdened with the far more onerous task of supporting a child who has no claim against his father's estate, requiring her to replace the support previously provided by the father. The statute therefore discriminates against women by failing to provide for their children a legal right of inheritance equivalent to that granted to the children of surviving male parents.[28]

The negative impact of this statute on women, intertwined with the general economic disadvantage suffered by women, renders it particularly offensive. Recently, this Court upheld a tax preference given to widows but not widowers, stating:

> There can be no dispute that the financial difficulties confronting the lone woman in Florida or in any other state exceed those facing the man. Whether from overt discrimination or from the socialization process of a dominated culture, the job market is inhospitable to the woman seeking any but the lowest paid jobs.
>
> ***
>
> We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden. Kahn v. Shevin, 416 U.S. 251 (1974).

There can be little doubt that the outcome in Kahn would have been different if widowers had been a preferred group. But here, in an analogous situation, the statute is

[28] In Labine, on the other hand, as noted earlier, the illegitimate child had a right to support from the estate of either parent.

doing the opposite of what was approved in Kahn. Section 12 of the Illinois Probate Act aggravates, rather than cushions, the financial impact of the death upon the sex for whom the loss imposes a disproportionately heavy burden. As noted in Kahn, even when women are able to enter the work force, they are paid proportionately less than their male counterparts. Female parents left with dependent children after the death of the father are in greater need of financial help in fulfilling their responsibility to support their children than would be men in the same situation. And yet, the staturoty scheme challenged here disadvantages women and assists men who are otherwise identically situated.

Most recently, in Weinberger v. Weisenfeld, this Court invalidated a Social Security Act scheme which discriminated on the basis of sex in the provision of benefits to the surviving parent. 420 U.S. 636 (1975). In Weisenfeld the Social Security Act, based on the earnings of a deceased husband and father, would grant benefits both to the widow and the couple's minor children. Based on the earnings of a deceased wife and mother, however, no benefits would go to the widower. The Court invalidated this sex discrimination. "The gender-based distinction of 42 U.S.C. Sec.402(g) is entirely irrational. The classification discriminates among surviving children solely on the basis of the sex of the surviving parent." 420 U.S. at 651. Here the classification discriminates against illegitimate children, against women, and among

surviving illegitimate children based solely on the sex of the surviving parent.

This is completely irrational. In addition, although a majority of this Court has yet to declare that discrimination on the basis of sex is suspect, several recent decisions do indicate that more than minimal scrutiny must be given such classifications.[29] Whether this Court applies the more than minimal scrutiny of the "fair and substantial relationship" test of Reed v. Reed 404 U.S. 71, (1971), or the strict scrutiny applied by four justices in Frontiero v. Richardson, 411 U.S. 677 (1973), or the traditional test, Section 12 of the Illinois Probate Act must fail, as it furthers no substantial legitimate governmental interest, compelling or otherwise. As discussed earlier, the discrimination does not protect the prompt and definitive disposition of property, particularly where the decedent has acknowledged paternity or has been adjudicated to be the father. Nor does it strengthen family ties. Instead of insuring that direct descendants have priority, the statute precludes illegitimate children from inheriting from intestate fathers, establishing a preference for collateral relatives to the exclusion of a man's natural children. Nor can the statute be based on the presumed intent of the decedent.

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[29] See, e.g., Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Reed v. Reed, 404 U.S. 71 (1971) and Frontiero v. Richardson, 411 U.S. 677 (1973).

In conclusion, there exists a preference in the statute in favor of surviving fathers and children and against surviving mothers and illegitimate children. The fathers are assisted in their obligation of support by the child's ability to inherit from the deceased mother's estate. The surviving mothers, on the other hand, despite other economic disadvantages, receive no equivalent assistance in meeting their legal obligations to support the child. The arbitrary and invidious discrimination against the children and the parent based on the sex of the surviving parent contravenes the purposes of the statute, is not justified by any legitimate governmental interest, and is completely analogous to the irrational scheme invalidated in Weisenfeld, supra. Moreover, in Reed, supra, this Court established that discrimination on the basis of sex in statutes governing intestate succession violates the Fourteenth Amendment.

This question was not presented in Labine. The Illinois statute at issue here, moreover, is far more representative than the Louisiana statute or those remaining archaic state schemes which bar some illegitimate children from inheriting in intestacy. The amalgram of discrimination against and among illegitimates with a veneer of discrimination on the basis of sex cannot withstand the scrutiny imposed on such classifications from Weber through Weisenfeld.

CONCLUSION

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

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APPENDICES

United States of America

State of Illinois } ss.
Supreme Court

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* eighth *day of* September *in the year of our Lord, one thousand nine hundred and* seventy-five *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE CHARLES H. DAVIS

JUSTICE JOSEPH H. GOLDENHERSH — JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, *that, to-wit: on the* 24th *day of* September *19* 75, *the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:*

Deta Mona Trimble and Jessie Trimble,

Appellants

No. 47339 vs.

Joseph Roosevelt Gordon, Ethel Mae King, William Gordon, Hellie Mae Gordey, and Mary Lois Gordon,

Appellees

Appeal from
Circuit Court
Cook County
74 P 5002

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment *aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.*

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County *aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said* appellees *recover of and from the said* appellants *costs by* them *in this behalf expended, to be taxed, and that* they *have execution therefor.*

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, *I have hereunto subscribed my name and affixed the Seal of said court this* 15th *day of* October *, 19* 75.

(S E A L)

/s/ Clell L. Woods,

Clerk,

Supreme Court of the State of Illinois.

APPENDIX A

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) SS.
SUPREME COURT)

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the following remarks were made by CHIEF JUSTICE UNDERWOOD at the end of the oral argument on September 24, 1975, in case No. 47339 - Deta Mona Trimble, et al., appellants, vs. Joseph Roosevelt Gordon, et al., appellees:

"CHIEF JUSTICE UNDERWOOD: Counsel, I think it will not be necessary to hear further argument. The Court has concluded that Karas is dispositive of the matter and it is the judgment of the Court that the judgment of the circuit court of Cook County is affirmed."

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 19th day of November, A.D. 1975.

Clell. Woods

Clerk,
Supreme Court of the State of Illinois.

APPENDIX B

(Nos. 46986, 47092 cons.–Judgments affirmed.)

In re ESTATE OF LOUIS KARAS.–(Mary Sodermark, Appellant, v. Evangelia Karas, Appellee.)–*In re* ESTATE OF ROBERT WOODS.–(Margaret Marie Collins, Appellant, v. Addie Wheeler, Adm'r, Appellee.)

Opinion filed June 2, 1975.

1. PROBATE–*the regulation of the descent of property, including the inheritance rights of illegitimates, is within the control of the legislature.* The regulation of the descent of property and of the right to devise property is entirely within the control of the legislature, and expansion of inheritance rights of an illegitimate child in the estate of the father who dies intestate must be left to legislative modification. (P. 45.)

2. CONSTITUTIONAL LAW–*burden of proof as to validity of classification.* Under traditional concepts of Federal equal protection, a legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose, and the burden of rebutting the presumptive validity of the classification rests upon the party challenging its constitutionality; but when the classification affects fundamental rights or involves a "suspect classification" the burden is placed upon the State to demonstrate that the distinction is justified by a compelling governmental interest. (Pp. 46-47.)

3. SAME–*a statute is not racially discriminatory merely because at a given time one racial group is more affected by it than another–inheritance by illegitimates.* A statute containing no racial classification is not racially discriminatory merely because the bare statistical possibility exists that at any given time it could incidentally tend to affect to a greater extent a particular racial group within the general class to which the statute is applicable, as where a statute precludes illegitimate children from inheriting from their intestate father and petitioner claims that statistics indicate that an excessively disproportionate share of illegitimate children are born to blacks and other minorities. (P. 50.)

4. SAME–*classifications based on sex or illegitimacy are not "suspect classifications" requiring a compelling governmental interest under the Federal equal protection clause.* A majority of the United States Supreme Court has never held that classifications based on sex or illegitimacy are "suspect classifications" that require the showing of a compelling governmental interest to support them. (Pp. 50-51.)

APPENDIX C

5. PROBATE–*the State has an interest in prohibiting spurious claims against an estate–inheritance by illegitimates.* The State has an interest in prohibiting spurious claims against an estate, and proof of paternal relationship may not be so readily ascertainable as proof of maternal ancestry, and these factors may be cited to uphold a legislative classification permitting illegitimate children to inherit from the mother who dies intestate while precluding them from inheriting from the father who dies intestate. (Pp. 51-52.)

6. CONSTITUTIONAL LAW–*the Supreme Court's interpretation of the Federal equal protection clause governs the State courts.* A State may not impose restrictions respecting equal protection of the laws as a matter of Federal constitutional law when the United States Supreme Court has specifically refrained from imposing them. (P. 53.)

7. SAME–*right to object to discrimination on account of sex is limited to those affected as a result of their own sex–inheritance by illegitimates.* Section 18 of article I of the 1970 Illinois Constitution guarantees that "equal protection of the laws shall not be denied or abridged on account of sex ***," but objections to classifications based on sex may be raised only by individuals who are affected as a result of their own sex, and not by those alleging sexual discrimination against others from which they claim to be damaged, as where a child objects to a State statute permitting illegitimates to inherit from the mother who dies intestate but not from the intestate father. (Pp. 53-54.)

8. PROBATE–*sections 9 and 11 of the Probate Act were not intended to create a statutory scheme for financial support–inheritance by illegitimates.* In a suit attacking the constitutionality of a statute permitting illegitimate children to inherit from a mother who dies intestate but not from the intestate father, it cannot be successfully contended that the statute discriminates against the surviving mother because her illegitimate child, in such case, will not inherit from its father, for sections 9 and 11 of the Probate Act were not intended to create a statutory scheme for financial support, and those who inherit under the Act do so irrespective of their financial statuts. (Pp. 55-56.)

9. CONSTITUTIONAL LAW–*trial court need not conduct hearing on paternity requested by illegitimate child of intestate decedent–due process.* An illegitimate child who may not, because of statute, inherit from its intestate father is not deprived of due process of law by the trial court's refusal to establish whether the decedent was the child's father. (P. 56.)

10. PROBATE—*an illegitimate child who cannot inherit from the intestate father may not act as administrator of his estate.* An illegitimate child who cannot, by reason of statute, inherit from its intestate father should not be allowed to act as administrator of his estate. (P. 56.)

No. 46986.—Appeal from the Appellate Court for the First District; heard in that court on appeal from the Circuit Court of Cook County; the Hon. John J. Hogan, Judge, presiding.

James R. Phelps and Wayne R. Andersen, of Burditt and Calkins, of Chicago, for appellant.

Gerald W. Shea, of Berwyn (Robert J. Lifton, of Neistein, Richman, Hauslinger & Young, Ltd., of Chicago, of counsel), for appellee.

No. 47092.—Appeal from the Circuit Court of Cook County; the Hon. John J. Hogan, Judge, presiding.

Mary Reardon Hooton, of Chicago, for appellant.

Schwartzberg, Barnett & Schwartzberg, Goodman, Krasner & Kipnis, and Zaidenberg, Hoffman & Schoenfeld, all of Chicago (Benjamin H. Cohen and Hugh J. Schwartzberg, of counsel), for appellee.

Devereux Bowly and Charles Linn, Legal Assistance Foundation of Chicago, and James Weill and Jane Stevens, Legal Assistance Foundation, all of Chicago (John Henry Schlegel, of Buffalo, New York, and Joseph Bomba (law student), of counsel), for *amici curiae* Deta Mona Trimble and Jessie Trimble.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

These consolidated appeals present the common issue of whether an acknowledged illegitimate child may inherit from her father who died intestate never having married the child's mother. A subsidiary issue involves the right of

an illegitimate to be appointed the administrator of the estate under these circumstances.

The relevant sections of the Probate Act read as follows:

"Sec. 12. Illegitimates.

* * *

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate." Ill. Rev. Stat. 1973, ch. 3, par. 12.

"Sec. 96. Persons entitled to preference in obtaining letters.) The following persons are entitled to preference in the following order in obtaining the issuance of letters of administration ***:

* * *

(2) The children or any person nominated by them." Ill. Rev. Stat. 1973, ch. 3, par. 96.

In cause No. 46986 Louis Karas died intestate. The circuit court of Cook County entered an order declaring Evangelia Karas, his widow, to be his only heir-at-law. Thereafter Mary Sodermark, petitioner, sought to vacate the order of heirship claiming that she was the child of Louis Karas and Estelle Ross, who never married. The Sodermark petition alleged that Estelle Ross had been institutionalized for psychiatric reasons and apparently upon her release had disappeared. The petition further averred that Mary Sodermark had been acknowledged as the child of Louis Karas and that he had contributed to her support while she lived with an aunt. The petition asserted that Louis Karas and his wife, Evangelia, lived for a time with Mary Sodermark, her husband and family and that Louis Karas had contributed a downpayment to the purchase of the Sodermark's house. The circuit court granted Evangelia's motion to strike and dismiss the

Sodermark petition. The appellate court affirmed (*In re Estate of Karas*, 21 Ill. App. 3d 564), and we granted leave to appeal.

In cause No. 47092 Robert Woods died intestate at the age of 81. He left no surviving spouse and no legitimate children or descendants thereof. The circuit court of Cook County determined that there existed certain collateral heirs-at-law of the deceased. Margaret Marie Collins, petitioner, then attempted to obtain letters of administration and a declaration of heirship on her behalf. She asserted in her petition that she was the acknowledged illegitimate daughter of the deceased and a lawful heir to his $37,000 estate. The circuit court sustained the motion of certain collateral heirs-at-law to strike and dismiss the Collins' petition, and we granted direct appeal (50 Ill.2d R. 302(b)).

We have permitted the filing of an *amicus* brief in these consolidated cases. The *amicus* has pending in this court a direct appeal involving similar issues. (*In re Estate of Gordon*, No. 47339.) The illegitimate in *Gordon* is a minor. *Amicus* asserts that prior to the death of the unmarried father there had been a judicial order adjudicating paternity and ordering that he support this child.

As accepted by the motions to strike and dismiss the petitions, for the purpose of these appeals Mary Sodermark and Margaret Marie Collins are the acknowledged illegitimate children of the respective decedents, who never married the natural mothers. (*Gertz v. Campbell* (1973), 55 Ill.2d 84, 87.) Thus they have not been legitimatized in accord with section 12 of the Probate Act, and under prior case law (*Krupp v. Sackwitz* (1961), 30 Ill. App. 2d 450, *appeal denied*, 21 Ill.2d 621) are not considered heirs of their fathers, who died intestate.

At common law an illegitimate could not inherit. (*Blacklaws v. Milne* (1876), 82 Ill. 505, 506.) By statute the result of this rule was ameliorated. (Ill. Ann. Stat., ch. 3, sec. 12, Historical Note, at 64 (Smith-Hurd 1961); see

also 2 Horner, Probate Practice and Estates, secs. 1348, 1350-51 (4th ed. 1960).) In *Smith v. Garber* (1918), 286 Ill. 67, the court, in discussing the predecessor provisions of section 12 of the Probate Act, stated:

> " 'Sections 2 and 3 of our Statute of Descent were enacted for the purpose of obviating the undue severity of the common law and of erecting a rule more consonant with justice to an innocent and unfortunate class. Section 2 *** abrogates the common law rule that an illegitimate is the child of nobody and could not take property by inheritance, even from its own mother.' (*Robinson v. Ruprecht*, 191 Ill. 424.)
>
> Under the common law an illegitimate was considered *filius nullius*. (1 Blackstone's Com. *459.) Under the statutes passed in this State in relation to illegitimate children, 'an illegitimate person is recognized as the child of his mother, as regards the descent of property.' (*Miller v. Williams*, 66 Ill. 91.) In *Bales v. Elder*, 118 Ill. 436, this court said that it was the purpose of the legislature in enacting the statute as to illegitimate children, to remove the common law disability of inheritance and place them more nearly on a level with legitimates. (See, also, *Jenkins v. Drane*, 121 Ill. 217; *Chambers v. Chambers*, 249 id. 126.) In *Robinson v. Ruprecht, supra*, this court said (p. 433): 'The rule [of the common law] visited the sins of the parents upon the unoffending offspring, and could not long survive the truer sense of justice and broader sense of charity that came with the advancing enlightenment and civilization of the race.' " 286 Ill. 67, 70-71.

It is argued in the Sodermark appeal that this court modify the common law rule that an acknowledged illegitimate may not be an heir of the intestate father's estate. She urges that she be allowed to inherit to the

extent of a legitimate child. This is not a tenable argument.

For nearly 150 years this State by statute has mitigated the effect of the common law rule prohibiting inheritance by illegitimates. While discussing other Probate Act provisions, this court has held that "The regulation of the descent of property and of the right to devise property as well as the method of conveying and the manner of creating estates and the character and quality of estates created, is purely statutory and entirely within the control of the legislature. [Citations.] Being wholly statutory the rules of descent may be changed by the legislature in its discretion, and conditions or burdens may be imposed upon the right of succession." (*Steinhagen v. Trull* (1926), 320 Ill. 382, 387; see also *Jahnke v. Selle* (1938), 368 Ill. 268, 271.) Moreover, *Miller v. Pennington* (1905), 218 Ill. 220, involved litigation contesting certain property of the intestate decedent. He had fathered two illegitimate sons by a woman whom he subsequently married. The question presented concerned whether these sons could be deemed to be legitimatized and could therefore share as heirs-at-law with the other legitimate children of the father. The descent statute, considered by the court (Hurd's Stat. 1899, ch. 39, sec. 3) in determining whether these sons had been legitimatized, is presently incorp rated within section 12 of the Probate Act. The court there held that the rights of the sons who had been born illegitimate were to be determined under the pertinent provision of the descent statute. The aforegoing authorities support the conclusion that expansion of inheritance rights of an illegitimate child in the estate of the father who dies intestate must be left to legislative modification. Therefore consideration of the applicability of the common law to intestate succession is of no relevance. *Campbell v. McLain* (1925), 318 Ill. 610, 612-13.

Petitioners and *amicus* urge that the statutory scheme which precludes the inheritance by an acknowledged illegitimate from the estate of the intestate father violates

the Federal and State constitutional provisions guaranteeing equal protection and due process of law. In so arguing petitioners and *amicus* recognize the possible adverse implications of the United States Supreme Court decision in *Labine v. Vincent* (1971), 401 U.S. 532, 28 L. Ed. 2d 288, 91 S. Ct. 1017.

In *Labine v. Vincent* the acknowledged illegitimate child had been precluded under Louisiana law from inheriting on an equal basis with legitimate children, if the father died intestate. It was argued that this statutory limitation was contrary to Federally secured rights to equal protection and due process. In a 5-to-4 decision the Supreme Court rejected these claims, stating that "the choices reflected by the intestate succession statute are choices which it is within the power of the State to make. The Federal Constitution does not give this Court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this Court believe that they can provide better rules." (401 U.S. 532, 537, 28 L. Ed. 2d 288, 293, 91 S. Ct. 1017, 1020.) The Supreme Court further concluded that Louisiana's intestate succession laws had not created "an insurmountable barrier" to the acknowledged illegitimate child inheriting from the father. Alternatives existed, such as the execution of a will or marriage to the child's mother, which would have obviated the bar to the inheritance. As later explained, *Labine v. Vincent* "reflected, in major part, the traditional deference to a State's prerogative to regulate the disposition at death of property within its borders. *** The Court has long afforded broad scope to state discretion in this area." *Weber v. Aetna Casualty & Surety Co.* (1972), 406 U.S. 164, 170, 31 L. Ed. 2d 768, 776, 92 S. Ct. 1400.

Under traditional concepts of Federal equal protection a legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose, and the burden of rebutting the presumptive validity of the

classification rests upon the party challenging its constitutionality. (*People v. Sherman* (1974), 57 Ill.2d 1, 4.) When the classification, however, affects fundamental rights (see *Hoskins v. Walker* (1974), 57 Ill.2d 503, 508) or involves a "suspect classification" (*People v. Ellis* (1974), 57 Ill.2d 127, 131), the burden is placed upon the State to demonstrate that the distinction is justified by a compelling governmental interest.

Petitioners and *amicus* expend much effort in attempting to refute the present application of *Labine v. Vincent*. They maintain that the rational bases suggested in that opinion to justify the classification cannot be applied in these cases. They also urge that other Supreme Court decisions have eroded the validity of that decision.

The Supreme Court noted that Louisiana's intestate succession scheme was rationally based on its interests to encourage family relationships and to establish a method of property disposition. (*Labine v. Vincent*, 401 U.S. 532, 536 n.6, 28 L. Ed. 2d 288, 292 n.6, 91 S. Ct. 1017, 1019 n.6.) Petitioners and *amicus* argue that Illinois statutes fail to disclose this State's interest in the promotion of family relationships as did the Louisiana statutes. We cannot accept this hypothesis. And we do not believe that Illinois has any lesser interest than Louisiana in regulating the transfer of a decedent's property in its jurisdiction. It is our opinion that petitioners and *amicus* have failed to detract from the impact of *Labine v. Vincent* in these regards.

Several Supreme Court decisions have been cited whose thrust is said to have severely lessened the present vitality of *Labine v. Vincent*. Petitioners and *amicus* cite *Levy v. Louisiana* (1968), 391 U.S. 68, 20 L. Ed. 2d 436, 88 S. Ct. 1509, which invalidated a State law precluding illegitimate children from seeking a recovery for the wrongful death of their mother when such an action could be maintained by legitimate children, and *Glona v. American Guarantee & Liability Insurance Co.* (1968), 391 U.S. 73, 20 L. Ed. 2d 441, 88 S. Ct. 1515, which nullified a statute that had been construed as prohibiting the mother of an illegitimate child from maintaining an action for his wrongful death. The Supreme Court, however, expressly found that the rationale of its prior decisions in *Levy* and *Glona* did not extend to the situation presented in *Labine v. Vincent*, 401 U.S. 532, 535, 28 L. Ed. 2d 288, 292, 91 S. Ct. 1017, 1019. Petitioners and *amicus* further cite *Weber v. Aetna Casualty & Surety Co.* (1972), 406 U.S. 164, 31 L. Ed. 2d 768, 92 S. Ct. 1400, which held that a dependent unacknowledged illegitimate child could not be deprived of workmen's compensation benefits accruing to dependent legitimate children as a result of the death of the natural father; *Gomez v. Perez* (1973), 409 U.S. 535, 35 L. Ed. 2d 56, 93 S. Ct. 872, which precluded a State from denying relief to an illegitimate child seeking support from his natural father when such relief was afforded to a legitimate child; *New Jersey Welfare Rights Organization v. Cahill* (1973), 411 U.S. 619, 36 L. Ed. 2d 543, 93 S. Ct. 1700, which voided certain statutory provisions of a State-aid program to poor families limiting benefits to married couples with minor children, thereby, in effect, denying benefits to illegitimate children; and *Jimenez v. Weinberger* (1974), 417 U.S. 628, 41 L. Ed. 2d 363, 94 S. Ct. 2496, which held unconstitutional a statutory program denying benefits to illegitimate children born after the onset of the parent's disability, while permitting benefits to illegitimate children who were similarly born, if the latter group of children could inherit under State intestacy laws, could be legitimated under State law or were considered illegitimate only as a result of a formal defect in their parents' marriage.

We have examined these decisions and do not find the constitutional impact of *Labine v. Vincent* to have been lessened. As previously set forth, *Weber v. Aetna Casualty & Surety Co.* explained *Labine v. Vincent*, and expressed no dissatisfaction with that decision.

In asserting that the present Illinois classification of illegitimates is violative of Federal constitutional principles, petitioners and *amicus* recommend that this court apply the stricter equal protection test which would require the State to justify the classification by a compelling governmental interest. It is claimed that the present classification is racially and sexually discriminatory and that illegitimacy is itself a suspect classification, thereby necessitating application of the stricter constitutional standard.

In support of the position that the statutory framework is racially discriminatory, petitioner in cause No. 47092 sets forth various statistical sources which she says indicate that an excessively disproportionate share of illegitimate children were born to blacks and other minorities as compared to Caucasians. In light of these statistics this petitioner concludes that section 12 of the Probate Act has evolved to the extent that it "fits into a pattern of legislation which often is only a thinly disguised cover for racial discrimination." A comparable claim of racial discrimination, predicated on similar statistics, was presented by the *amicus* in *Labine v. Vincent* with no apparent success. Moreover, section 12 of the Probate Act does not contain any racial classification and affects all members of the class of illegitimates without regard to racial heritage. Such a statute, without more, would not appear in and of itself to substantiate a claim that it is racially discriminatory merely because the bare statistical possibility exists that at any given time it could incidentally tend to affect to a greater extent a particular racial group within the general class. The alleged deprivation of which petitioner complains is remedied through the simple expedient of testamentary disposition by means of a will. And no claim is advanced that any racial group is restricted in any judicially cognizable manner from utilizing this procedure.

The argument that section 12 sexually discriminates

so as to give rise to a stricter approach to Federal equal protection principles is also unpersuasive. We are cognizant of the recent decision wherein the Supreme Court struck down a Social Security provision which had precluded survivor's benefits to an unemployed widower who remained at home to care for his minor child, while permitting such payments to a similarly situated widow. The court there held that this classification was not rational under the statute's intended purpose. (*Weinberger v. Wiesenfeld* (1975), ––– U.S. –––, 43 L. Ed. 2d 514, 95 S. Ct. 1225.) However, while the claim is made that a classification by sex requires a more stringent application of equal protection principles, we find that only four members of the Supreme Court have accepted this position. (*Frontiero v. Richardson* (1973), 411 U.S. 677, 36 L. Ed. 2d 583, 93 S. Ct. 1764 (plurality opinion); see also *Stanton v. Stanton* (1975), ––– U.S. –––, 43 L. Ed. 2d 688, 95 S. Ct. 1373; *Schlesinger v. Ballard* (1975), ––– U.S. –––, 42 L. Ed. 2d 610, 95 S. Ct. 572 (Brennan, J., dissenting); *Kahn v. Shevin* (1974), 416 U.S. 351, 40 L. Ed. 2d 189, 94 S. Ct. 1734 (Brennan, J., dissenting).) We are unwilling to decide that all classifications based upon sex require that the State establish a compelling governmental interest under the Federal equal protection clause.

No decision has been cited in which a classification based on illegitimacy has been expressly held to be a suspect classification. Rather the decisions concerning illegitimacy previously set forth would seem to have been determined on whether or not the classification could be said to be predicated on a rational basis. In *Jimenez v. Weinberger* (1974), 417 U.S. 628, 41 L. Ed. 2d 363, 94 S. Ct. 2496, the Supreme Court stated it need not reach the argument as to whether a stricter equal protection standard was applicable in order to determine the validity of a classification premised on illegitimacy. Moreover, the *amicus* brief filed in *Labine v. Vincent* suggests the

argument was advanced that stricter equal protection principles be utilized when examining a classification based on illegitimacy. Thus for several of the comparable reasons expressed in our discussion of the issues regarding alleged race and sex discrimination stemming from application of section 12 of the Probate Act, we are unable to presently conclude that a classification based on illegitimacy is a suspect classification under Federal constitutional interpretation.

The precise issue set forth in *Labine v. Vincent* is present in these appeals, *i.e.*, can an acknowledged illegitimate be treated differently than a legitimate child and thereby, in effect, be precluded from sharing in its father's estate by State laws governing intestate succession. In each of these specific appeals no "insurmountable barrier" to Mary Sodermark and Margaret Marie Collins sharing in their fathers' estates has been created. In both instances the deceased fathers apparently lived for a substantial number of years. Since Louis Karas was survived by his spouse, he could have devised as much as two thirds of his estate to Mary Sodermark. (Ill. Rev. Stat. 1973, ch. 3, par. 16; see *Montgomery v. Michaels* (1973), 54 Ill.2d 532, 534-5.) Because Robert Woods had no surviving spouse, he could have left his entire estate to Margaret Marie Collins if he had utilized the simple formalities of a will.

We further recognize that the State maintains an interest in prohibiting spurious claims against an estate. The parties to these appeals tend to agree that proof of a lineal relationship is more readily ascertainable when dealing with maternal ancestors. It is suggested that proof of paternal relationship may not be so readily ascertainable but that such considerations should be decided individually on the facts of each case. While establishing paternity in a proceeding to determine heirship is possible, situations may arise which are fraught with fraudulent circumstances. There exists the possibility that an illegitimate "grandson" may seek to inherit from his "grandfather" who dies not only intestate but also after the death of his own son and without knowledge of the existence of the illegitimate. Similar circumstances might also arise in which illegitimates, claiming a collateral relationship, would seek rights to the estates of paternal intestate kindred. (See generally *Gregory v. County of LaSalle* (1968), 91 Ill. App. 2d 290.) There also may be situations in which a "father's" testamentary disposition is challenged on behalf of an illegitimate child who was born after the will was executed, thereby possibly permitting the child to recover a share of the estate equivalent to that allowed if the "father" had died intestate. Ill. Rev. Stat. 1973, ch. 3, par. 48; 2 Horner, Probate Practice and Estates sec. 1331 (4th ed. 1960).

In summary, to accept the numerous arguments raised by petitioners and *amicus* in regard to Federal equal protection principles would result in this court's placing strictures on *Labine v. Vincent*. "But, of course, a State may not impose such greater restrictions as a matter of *federal constitutional law* when this Court [United States Supreme Court] specifically refrains from imposing them." (Emphasis in original.) *Oregon v. Haas* (1975), --- U.S. ---, ---, 43 L. Ed. 2d 570, 576, 95 S. Ct. 1215, 1219.

There remains the contention that section 12 of the Probate Act is unconstitutional because it violates State constitutional guarantees that "equal protection of the laws shall not be denied or abridged on account of sex ***." (Ill. Const. (1970), art. I, sec. 18.) In *People v. Ellis* (1974), 57 Ill.2d 127, 132-33, we construed this provision as rendering any classification based on sex to be a "suspect classification," thus subjecting it to "strict judicial scrutiny" and requiring the existence of a compelling State interest to justify the classification. See also *Phelps v. Bing* (1974), 58 Ill.2d 32.

Petitioner in cause No. 47092 first claims that section

12(4) of the Probate Act discriminates against the father and his descendants when his illegitimate child dies intestate leaving no spouse or descendants. If this situation occurs, petitioner says the father and his descendants are precluded from sharing in the child's estate while the mother and her descendants may share in the estate. A comparable attack is made upon sections 12(5) to 12(7), which generally concern inheritance from the estate of an illegitimate by maternal kindred while omitting consideration of paternal kindred. Petitioner also maintains that section 12 requires a mother to draw a will in order to disinherit her children while a father of an illegitimate child, who is not legitimized by the procedures of section 12, need not do so. Conversely, if the father of the illegitimate wishes the illegitimate child to share in his estate he must execute a will, whereas the mother need not resort to this course of action. Finally, petitioner argues that she is injured by limiting her inheritance to the estate of her mother who dies intestate or her maternal ancestors and by precluding her inheritance from her father or his ancestors. She claims that she should either inherit from both or inherit from neither, and she concludes that as a result of section 12 of the Probate Act she is injured by the sexual discrimination against each of her parents.

No contention is asserted that section 12 of the Probate Act results in any sexual discrimination as between similarly situated males and females who seek inheritance from the estates of their fathers or other paternal kindred. Under section 12 no discrimination inures to an illegitimate as a result of the illegitimate's sex. The question therefore presented in whether under these circumstances one may assert a claim of discrimination based upon the sex of another person pursuant to section 18 of article I of the State Constitution.

In our decisions of *Ellis* and *Bing* the individuals were treated differently on the basis of their sex because of classifications in the Juvenile Court Act and Marriage Act.

Neither case involved a situation wherein the affected individuals asserted a constitutional deprivation based solely on the sex of another person, as in these appeals. The official explanation of section 18 of article I recites that "no government in Illinois may deny equal protection of the law to anyone because of his or her sex." (7 Record of Proceedings, Sixth Illinois Constitutional Convention 2688.) This explication indicates that State constitutional issues raising questions of classifications based on sexual differentiation may be raised by individuals who are thereby affected as a result of their own sex. For this reason, we are of the opinion that petitioner's State constitutional claim is without merit.

Amicus argues that both parents have a duty to support a child and if one parent dies the survivor's duty is necessarily increased. *Amicus* says that section 12 invidiously discriminates against the surviving mother in preference to the surviving father of the illegitimate child. It is argued that the father is aided in his obligation of support because the child may inherit from the mother. Conversely, they argue, the mother is not aided and, in fact, is burdened, for the child cannot inherit from the father and support from the father is no longer available. *Amicus* concludes that section 12 "discriminates against women by failing to provide for their children a legal right of inheritance equivalent to that granted to the children of surviving male parents." To buttress this argument *amicus* refers only to sections 9 and 11 of the Probate Act (ch. 3, pars. 9 and 11), which *amicus* asserts are designed to prevent a decedent's closest relatives from becoming wards of the State.

We have examined these provisions and are unable to interpret these sections as intending to create a statutory scheme for financial support. Section 9, in pertinent part, merely says that the Probate Act shall be liberally construed. Section 11 establishes an intestate succession for the devolution of property not involving illegitimates.

There is no basis evident from the language employed in either section which permits an interpretation that these provisions were intended to alleviate the possibility that certain close relatives of the decedent would seek public assistance. Obviously the application of section 11 provides the basis wherein certain relatives may assure their living standard or even elevate it by their inheritance. But this provision also allows inheritance to wealthy relations to the exclusion of impoverished individuals who may be only slightly more remote in their relationship to the decedent. Moreover, relations of equal degree similarly inherit even though there may exist extreme divergence in their financial status.

Having concluded that the petitioners were not denied equal protection of the law, we do not find that they were deprived of due process of law by the trial courts' refusals to permit a hearing wherein they might seek to establish the paternity of the decedents. *Cf. Stanley v. Illinois* (1972), 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208.

There remains the contention advanced by petitioner in cause No. 47092 that she has a preference in issuance of letters of administration as set forth in section 96(2) of the Probate Act (ch. 3, par. 96(2)). In determining that petitioner may not inherit from her father under the circumstances presented in this case, we do not believe it logical that she should be allowed to participate in the administration of his estate. See *Myatt v. Myatt* (1867), 44 Ill. 473, 476.

Accordingly, the judgment of the appellate court in cause No. 46986 is affirmed. The judgment of the circuit court of Cook County in cause No. 47092 is affirmed.

Judgments affirmed.

IN THE
SUPREME COURT OF ILLINOIS

IN RE ESTATE OF SHERMAN GORDON,
Deceased,

DETA MONA TRIMBLE, and
JESSIE TRIMBLE,
PETITIONERS-
APPELLANTS,

_VS_

JOSEPH ROOSEVELT GORDON,
ETHEL MAE KING,
WILLIAM GORDON,
HELLIE MAE GORDEY,
and MARY LOIS GORDON,
RESPONDENTS-
APPELLEES.

NO. 47339

O R D E R

This matter coming before the court on the motion of DETA MONA TRIMBLE and JESSIE TRIMBLE, Petitioners-Appellants herein, it is hereby ordered that the mandate of this court, issued to the Clerk of the Circuit Court of Cook County on October 15, 1975, be and is hereby recalled and stayed, pending resolution of the petitioners' application for review of the judgment herein by the Supreme Court of the United States, which application will be promptly made (DSW)

Daniel P. Ward

DATED: Oct 21-75

Devereux Bowly and Charles Linn
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APPENDIX D

IN THE
SUPREME COURT OF ILLINOIS

IN RE ESTATE OF SHERMAN GORDON, Deceased,	)
DETA MONA TRIMBLE, and JESSIE TRIMBLE, PETITIONERS-APPELLANTS,	)
VS.	)
JOSEPH ROOSEVELT GORDON, ETHEL MAE KING, WILLIAM GORDON, HELLIE MAE GORDEY, and MARY LOIS GORDON, RESPONDENTS-APPELLEES.	) NO. 47339

NOTICE OF APPEAL

Appellants, DETA MONA TRIMBLE and JESSIE TRIMBLE, appeal to the Supreme Court of the United States from the final judgment of this court entered September 24, 1975, affirming the judgment of the Circuit Court of Cook County declaring DETA MONA TRIMBLE not the heir at law of SHERMAN GORDON, and thus denying her any part of his estate.

This appeal is taken pursuant to 28 U.S.C. §1257(2). The basis of the decision against appellants was Illinois

APPENDIX E

Revised Statutes, Chapter 3, entitled "ADMINISTRATION OF ESTATES," Section 12, entitled "Illegitimates." Appellants at all times claimed that the said statute was in violation of the Fourteenth Amendment to the Constitution of the United States. The final judgment from which the appeal is taken is in favor of the validity of said statute.

Respectfully submitted,

One of the attorneys for
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IN THE
SUPREME COURT OF ILLINOIS

IN RE ESTATE OF SHERMAN GORDON,
Deceased,

DETA MONA TRIMBLE, and
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PETITIONERS-
APPELLANTS,

VS.

JOSEPH ROOSEVELT GORDON,
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WILLIAM GORDON,
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and MARY LOIS GORDON,

RESPONDENTS-
APPELLEES.

NO. 47339

NOTICE OF FILING

PLEASE TAKE NOTICE that on November 12, 1975, the NOTICE OF APPEAL in this case was mailed to Clell L. Woods, Clerk of the Supreme Court of Illinois, for filing.

One of the Attorneys for Appellants

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IN THE
SUPREME COURT OF ILLINOIS

IN RE ESTATE OF SHERMAN GORDON,
Deceased,

DETA MONA TRIMBLE, and
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RESPONDENTS-
APPELLEES.

NO. 47339

PROOF OF SERVICE

STATE OF ILLINOIS
COUNTY OF COOK

Devereux Bowly, being duly sworn states on oath that I have served a copy of Appellants' Notice of Appeal on:

Mr. Fred Klinsky, Attorney-at-Law
188 West Randolph Street
Chicago, Illinois 60601

Mrs. Ethel Mae King
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Mr. William Gordon
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Chicago, Illinois 60644

Mr. Joseph Roosevelt Gordon
General Delivery
Meridian, Mississippi 39301

Mrs. Hellie Mae Gordey
General Delivery
Meridian, Mississippi 39301

Ms. Mary Lois Gordon
General Delivery
Lawdale, Mississippi

by depositing a copy of same in a mail box with first class postage prepaid to the Chicago addresses, and air mail postage prepaid to the Mississippi addresses this 12th day of November, 1975.

_____

Subscribed and sworn to before me this 12th day of November, 1975.

_____
Norary Public

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